

By: Simmons

H.B. No. 26

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of the Texas Board of Behavior Analyst Examiners and the requirement to obtain a license to practice as a behavior analyst or assistant behavior analyst; imposing fees; providing an administrative penalty; providing a civil penalty; creating a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle I, Title 3, Occupations Code, is amended by adding Chapter 506 to read as follows:

CHAPTER 506. BEHAVIOR ANALYSTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 506.001. SHORT TITLE. This chapter may be cited as the Behavior Analyst Licensing Act.

Sec. 506.002. DEFINITIONS. In this chapter:

(1) "Behavior analyst board" means the Texas Board of Behavior Analyst Examiners.

(2) "Certifying entity" means the nationally accredited Behavior Analyst Certification Board or another entity that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute to issue credentials in the professional practice of applied behavior analysis and approved by the behavior analyst board.

(3) "Executive director" means the executive director of the medical board.

1           (4) "License holder" means a person licensed under  
2 this chapter.

3           (5) "Licensed assistant behavior analyst" means a  
4 person who is certified by the certifying entity as a Board  
5 Certified Assistant Behavior Analyst or who has an equivalent  
6 certification issued by the certifying entity and who meets the  
7 requirements specified by Sections 506.252 and 506.254.

8           (6) "Licensed behavior analyst" means a person who is  
9 certified by the certifying entity as a Board Certified Behavior  
10 Analyst or Board Certified Behavior Analyst--Doctoral or who has an  
11 equivalent certification issued by the certifying entity and who  
12 meets the requirements specified by Sections 506.252 and 506.253.

13           (7) "Medical board" means the Texas Medical Board.

14           (8) "Physician" means a person licensed to practice  
15 medicine by the medical board.

16           Sec. 506.003. PRACTICE OF APPLIED BEHAVIOR ANALYSIS. (a)  
17 The practice of applied behavior analysis is the design,  
18 implementation, and evaluation of instructional and environmental  
19 modifications to produce socially significant improvements in  
20 human behavior.

21           (b) The practice of applied behavior analysis includes the  
22 empirical identification of functional relations between behavior  
23 and environmental factors, known as functional assessment or  
24 functional analysis.

25           (c) Applied behavior analysis interventions:

26           (1) are based on scientific research and the direct  
27 observation and measurement of behavior and environment; and

1           (2) use contextual factors, motivating operations,  
2 antecedent stimuli, positive reinforcement, and other procedures  
3 to help individuals develop new behaviors, increase or decrease  
4 existing behaviors, and elicit or evoke behaviors under specific  
5 environmental conditions.

6           (d) The practice of applied behavior analysis does not  
7 include:

8                 (1) psychological testing, psychotherapy, cognitive  
9 therapy, psychoanalysis, hypnotherapy, or counseling as treatment  
10 modalities; or

11                 (2) the diagnosis of disorders.

12           SUBCHAPTER B. APPLICATION OF CHAPTER; USE OF TITLE

13           Sec. 506.051. LICENSED PSYCHOLOGISTS. This chapter does  
14 not apply to a person licensed to practice psychology in this state  
15 if the applied behavior analysis services provided are within the  
16 scope of the licensed psychologist's education, training, and  
17 competence.

18           Sec. 506.052. OTHER LICENSED PROFESSIONALS. This chapter  
19 does not apply to a person licensed to practice another profession  
20 in this state if the applied behavior analysis services provided  
21 are within:

22                 (1) the scope of practice of the person's license under  
23 state law; and

24                 (2) the scope of the person's education, training, and  
25 competence.

26           Sec. 506.053. FAMILY MEMBERS AND GUARDIANS. This chapter  
27 does not apply to a family member or guardian of a recipient of

applied behavior analysis services who is implementing a behavior analysis treatment plan for the recipient under the extended authority and direction of a licensed behavior analyst or licensed assistant behavior analyst.

Sec. 506.054. PARAPROFESSIONALS. This chapter does not apply to a paraprofessional technician who delivers applied behavior analysis services if:

(1) the applied behavior analysis services are provided under the extended authority and direction of a licensed behavior analyst or licensed assistant behavior analyst; and

(2) the person is designated as an "applied behavior analysis technician," "behavior technician," "tutor," or "front-line therapist."

Sec. 506.055. STUDENTS, INTERNS, AND FELLOWS. This chapter does not apply to an applied behavior analysis activity or service of a college or university student, intern, or fellow if:

(1) the activity or service is part of a defined behavior analysis program of study, course, practicum, internship, or postdoctoral fellowship;

(2) the activity or service is directly supervised by a licensed behavior analyst or an instructor in a course sequence approved by the certifying entity; and

(3) the person is designated as a "student," "intern," "fellow," or "trainee."

Sec. 506.056. SUPERVISED EXPERIENCE. This chapter does not apply to an unlicensed person pursuing supervised experience in applied behavior analysis if the supervised experience is

consistent with the requirements of the certifying entity and behavior analyst board rules.

Sec. 506.057. TEMPORARY SERVICES OF BEHAVIOR ANALYST FROM ANOTHER STATE. (a) This chapter does not apply to a behavior analyst licensed in another jurisdiction or certified by the certifying entity if the activities and services conducted in this state:

(1) are within the behavior analyst's customary area of practice;

(2) are conducted not more than 20 days in a calendar year; and

(3) are not otherwise in violation of this chapter.

(b) A behavior analyst described by Subsection (a) shall inform the recipient of applied behavior analysis services, or a parent or guardian of the recipient if the recipient is under 18 years of age, that:

(1) the behavior analyst is not licensed in this state; and

(2) the activities and services provided by the behavior analyst are time-limited.

Sec. 506.058. TEACHER OR EMPLOYEE OF PRIVATE OR PUBLIC SCHOOL. (a) This chapter does not apply to a teacher or employee of a private or public school who provides applied behavior analysis services if the teacher or employee is performing duties within the scope of the teacher's or employee's employment.

(b) A person described by Subsection (a) may not:

(1) represent that the person is a behavior analyst,

1 unless the applied behavior analysis services provided are within  
2 the person's education, training, and competence;

3 (2) offer applied behavior analysis services to any  
4 person, other than within the scope of the person's employment  
5 duties for the school; or

6 (3) receive compensation for providing applied  
7 behavior analysis services, other than the compensation that the  
8 person receives from the person's school employer.

9 Sec. 506.059. USE OF TITLE "BEHAVIOR ANALYST." (a) This  
10 chapter does not apply to a person described by Subsection (b).

11 (b) A person may use the title "behavior analyst" if the  
12 person:

13 (1) is a behavior analyst who practices with  
14 nonhumans, including an applied animal behaviorist or an animal  
15 trainer;

16 (2) teaches behavior analysis or conducts behavior  
17 analytic research provided the teaching or research activities do  
18 not involve the delivery or supervision of applied behavior  
19 analysis services; or

20 (3) is a professional who provides to organizations  
21 general applied behavior analysis services that:

22 (A) are for the benefit of the organization; and

23 (B) do not involve direct services to  
24 individuals.

25 SUBCHAPTER C. TEXAS BOARD OF BEHAVIOR ANALYST EXAMINERS

26 Sec. 506.101. BOARD MEMBERSHIP. (a) The behavior analyst  
27 board is composed of nine members appointed by the governor with the

advice and consent of the senate as follows:

(1) four licensed behavior analysts, at least one of whom must be certified as a Board Certified Behavior Analyst--Doctoral, or hold an equivalent certification issued by the certifying entity;

(2) one licensed assistant behavior analyst;

(3) one physician who has experience providing mental health or behavioral health services; and

(4) three members who represent the public and who are either former recipients of applied behavior analysis services or the parent or guardian of a current or former recipient of applied behavior analysis services.

(b) To be qualified for appointment under Subsection (a)(1), a person must have at least five years of experience as a licensed behavior analyst after being certified by the certifying entity.

(c) Appointments to the behavior analyst board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Sec. 506.102. ELIGIBILITY OF PUBLIC MEMBERS. A person is not eligible for appointment as a public member of the behavior analyst board if:

(1) the person is registered, certified, or licensed by an occupational regulatory agency in the field of mental health;

(2) the person's spouse is registered, certified, or licensed by an occupational regulatory agency in the field of mental health; or

1           (3) the person or the person's spouse:

2                   (A) is employed by or participates in the  
3 management of a business entity or other organization receiving  
4 funds from the medical board or the behavior analyst board;

5                   (B) owns or controls, directly or indirectly,  
6 more than a 10 percent interest in a business entity or other  
7 organization receiving funds from the medical board or the behavior  
8 analyst board; or

9                   (C) uses or receives a substantial amount of  
10 funds from the medical board or the behavior analyst board, other  
11 than compensation or reimbursement authorized by law for medical  
12 board or behavior analyst board membership, attendance, or  
13 expenses.

14           Sec. 506.103. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a)  
15 In this section, "Texas trade association" means a cooperative and  
16 voluntarily joined statewide association of business or  
17 professional competitors in this state designed to assist its  
18 members and its industry or profession in dealing with mutual  
19 business or professional problems and in promoting their common  
20 interest.

21           (b) A person may not be a member of the behavior analyst  
22 board and may not be an employee of the medical board or the  
23 behavior analyst board employed in a "bona fide executive,  
24 administrative, or professional capacity," as that phrase is used  
25 for purposes of establishing an exemption to the overtime  
26 provisions of the federal Fair Labor Standards Act of 1938 (29  
27 U.S.C. Section 201 et seq.) if:



1           (1) the person is an officer, employee, manager, or  
2 paid consultant of a Texas trade association in the field of mental  
3 health; or

4           (2) the person's spouse is an officer, employee,  
5 manager, or paid consultant of a Texas trade association in the  
6 field of mental health.

7           (c) A person may not be a member of the behavior analyst  
8 board or act as general counsel to the medical board or the behavior  
9 analyst board if the person is required to register as a lobbyist  
10 under Chapter 305, Government Code, because of the person's  
11 activities for compensation on behalf of a profession related to  
12 the operation of the behavior analyst board.

13           Sec. 506.104. TERMS; VACANCY. (a) Members of the behavior  
14 analyst board serve staggered six-year terms, with the terms of  
15 three members expiring February 1 of each odd-numbered year.

16           (b) A member may not serve more than two consecutive  
17 six-year terms.

18           (c) If a vacancy occurs during a member's term, the governor  
19 shall appoint a member to fill the unexpired term.

20           (d) A member shall serve until a successor is appointed and  
21 assumes office.

22           Sec. 506.105. OFFICERS. At the meeting of the behavior  
23 analyst board held on the date closest to August 31 of each year,  
24 the behavior analyst board shall elect from its members a presiding  
25 officer, a secretary, and any other officers required to conduct  
26 the business of the behavior analyst board.

27           Sec. 506.106. GROUNDS FOR REMOVAL. (a) It is a ground for

1 removal from the behavior analyst board that a member:

2 (1) does not have at the time of taking office the  
3 qualifications required by Section 506.101;

4 (2) does not maintain during service on the behavior  
5 analyst board the qualifications required by Section 506.101;

6 (3) is ineligible for membership under Sections  
7 506.102 or 506.103;

8 (4) cannot, because of illness or disability, complete  
9 the member's duties for a substantial part of the member's term; or

10 (5) is absent from more than half of the regularly  
11 scheduled behavior analyst board meetings that the member is  
12 eligible to attend during a calendar year without an excuse  
13 approved by a majority vote of the behavior analyst board.

14 (b) The validity of an action of the behavior analyst board  
15 is not affected by the fact that the action is taken when a ground  
16 for removal of a member exists.

17 (c) If the executive director has knowledge that a potential  
18 ground for removal exists, the executive director shall notify the  
19 presiding officer of the behavior analyst board of the potential  
20 ground. The presiding officer shall then notify the governor and  
21 the attorney general that a potential ground for removal exists. If  
22 the potential ground for removal involves the presiding officer,  
23 the executive director shall notify the next highest ranking  
24 officer of the behavior analyst board, who shall then notify the  
25 governor and the attorney general that a potential ground for  
26 removal exists.

27 Sec. 506.107. COMPENSATION; REIMBURSEMENT. (a) A

1 behavior analyst board member may not receive compensation for the  
2 member's services. A member is entitled to a per diem and travel  
3 allowance for each day the member engages in behavior analyst board  
4 business at the rate set for state employees in the General  
5 Appropriations Act.

6 (b) The per diem and travel allowance authorized by this  
7 section may be paid only from fees collected under this chapter.

8 Sec. 506.108. MEETINGS. (a) The behavior analyst board  
9 shall meet at least twice each year.

10 (b) The behavior analyst board may meet at other times at  
11 the call of the presiding officer or a majority of the members.

12 Sec. 506.109. TRAINING PROGRAM FOR MEMBERS. (a) A person  
13 who is appointed to and qualifies for office as a member of the  
14 behavior analyst board may not vote, deliberate, or be counted as a  
15 member in attendance at a meeting of the behavior analyst board  
16 until the person completes a training program that complies with  
17 this section.

18 (b) The training program must provide the person with  
19 information regarding:

20 (1) this chapter;  
21 (2) the programs, functions, rules, and budget of the  
22 behavior analyst board;

23 (3) the scope of and limitations on the rulemaking  
24 authority of the behavior analyst board;

25 (4) the results of the most recent formal audit of the  
26 behavior analyst board;

27 (5) the requirements of:

1                   (A) laws relating to open meetings, public  
2 information, administrative procedure, and disclosing conflicts of  
3 interest; and

4                   (B) other laws applicable to members of a state  
5 policymaking body in performing their duties; and

6                   (6) any applicable ethics policies adopted by the  
7 behavior analyst board or the Texas Ethics Commission.

8                   (c) A person appointed to the behavior analyst board is  
9 entitled to reimbursement, as provided by the General  
10 Appropriations Act, for the travel expenses incurred in attending  
11 the training program regardless of whether the attendance at the  
12 program occurs before or after the person qualifies for office.

13                   (d) The executive director shall create a training manual  
14 that includes the information required by Subsection (b). The  
15 executive director shall distribute a copy of the training manual  
16 annually to each behavior analyst board member. On receipt of the  
17 training manual, each behavior analyst board member shall sign and  
18 submit to the executive director a statement acknowledging receipt  
19 of the training manual.

20                   Sec. 506.110. CIVIL LIABILITY. A member of the behavior  
21 analyst board is not liable in a civil action for an act performed  
22 in good faith while performing duties as a member.

23                   SUBCHAPTER D. POWERS AND DUTIES OF BEHAVIOR ANALYST BOARD AND

24                                   MEDICAL BOARD

25                   Sec. 506.151. GENERAL POWERS AND DUTIES OF BEHAVIOR ANALYST  
26 BOARD. (a) Subject to the advice and approval of the medical  
27 board, the behavior analyst board shall:

1           (1) adopt rules consistent with this chapter to carry  
2 out the behavior analyst board's duties in administering this  
3 chapter; and

4           (2) establish standards of conduct and adopt a code of  
5 professional ethics for license holders.

6           (b) The behavior analyst board shall:

7                 (1) administer and enforce this chapter;

8                 (2) determine the qualifications and fitness of each  
9 applicant for a license, license renewal, or temporary license and  
10 review and approve or reject each application for the issuance or  
11 renewal of a license;

12                 (3) issue each license;

13                 (4) deny, suspend, or revoke a license or otherwise  
14 discipline a license holder; and

15                 (5) ensure strict compliance with and enforcement of  
16 this chapter.

17           Sec. 506.152. ASSISTANCE BY MEDICAL BOARD. (a) The medical  
18 board shall provide administrative and clerical employees as  
19 necessary to enable the behavior analyst board to administer this  
20 chapter.

21           (b) Subject to the advice and approval of the medical board,  
22 the behavior analyst board shall develop and implement policies  
23 that clearly separate the policy-making responsibilities of the  
24 behavior analyst board and the management responsibilities of the  
25 executive director and the staff of the medical board.

26           Sec. 506.153. FEES. (a) The behavior analyst board, with  
27 the advice and approval of the medical board, by rule shall set fees

in amounts reasonable and necessary to cover the costs of administering this chapter.

(b) Funds to administer this chapter may be appropriated only from fees collected under this chapter.

Sec. 506.154. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The medical board or behavior analyst board may not adopt rules restricting advertising or competitive bidding by a license holder except to prohibit false, misleading, or deceptive practices.

(b) The medical board or behavior analyst board may not include in rules to prohibit false, misleading, or deceptive practices by a license holder a rule that:

(1) restricts the license holder's use of any advertising medium;

(2) restricts the license holder's personal appearance or use of the license holder's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the license holder; or

(4) restricts the license holder's advertisement under a trade name.

Sec. 506.155. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. (a) The behavior analyst board shall adopt rules necessary to comply with Chapter 53.

(b) In the behavior analyst board's rules under this section, the behavior analyst board shall list the specific offenses for which a conviction would constitute grounds for the behavior analyst board to take action under Section 53.021.

1       Sec. 506.156. ANNUAL REGISTRY. (a) The behavior analyst  
2 board shall annually prepare a registry of all license holders.

3       (b) The behavior analyst board shall make the registry  
4 available to the public, license holders, and other state agencies.

5       Sec. 506.157. BEHAVIOR ANALYST BOARD DUTIES REGARDING  
6 COMPLAINTS. (a) The behavior analyst board by rule shall:

7           (1) adopt a standardized form for filing complaints  
8 with the behavior analyst board; and

9           (2) prescribe information to be provided when a person  
10 files a complaint with the behavior analyst board.

11       (b) The behavior analyst board shall provide reasonable  
12 assistance to a person who wishes to file a complaint with the  
13 behavior analyst board.

14       Sec. 506.158. USE OF TECHNOLOGY. Subject to the advice and  
15 approval of the medical board, the behavior analyst board shall  
16 implement a policy requiring the behavior analyst board to use  
17 appropriate technological solutions to improve the behavior  
18 analyst board's ability to perform the behavior analyst board's  
19 functions. The policy must ensure that the public is able to  
20 interact with the behavior analyst board on the Internet.

21       Sec. 506.159. NEGOTIATED RULEMAKING AND ALTERNATIVE  
22 DISPUTE RESOLUTION POLICY. (a) Subject to the advice and approval  
23 of the medical board, the behavior analyst board shall develop and  
24 implement a policy to encourage the use of:

25           (1) negotiated rulemaking procedures under Chapter  
26 2008, Government Code, for the adoption of behavior analyst board  
27 rules; and

1           (2) appropriate alternative dispute resolution  
2 procedures under Chapter 2009, Government Code, to assist in the  
3 resolution of internal and external disputes under the behavior  
4 analyst board's jurisdiction.

5           (b) The behavior analyst board's procedures relating to  
6 alternative dispute resolution must conform, to the extent  
7 possible, to any model guidelines issued by the State Office of  
8 Administrative Hearings for the use of alternative dispute  
9 resolution by state agencies.

10          (c) The behavior analyst board shall designate a trained  
11 person to:

12           (1) coordinate the implementation of the policy  
13 adopted under Subsection (a);

14           (2) serve as a resource for any training needed to  
15 implement the procedures for negotiated rulemaking or alternative  
16 dispute resolution; and

17           (3) collect data concerning the effectiveness of those  
18 procedures, as implemented by the behavior analyst board.

19           SUBCHAPTER E. PUBLIC INTEREST INFORMATION

20                   AND COMPLAINT PROCEDURES

21          Sec. 506.201. PUBLIC INTEREST INFORMATION. (a) The  
22 behavior analyst board shall prepare information of public interest  
23 describing the functions of the behavior analyst board.

24          (b) The behavior analyst board shall make the information  
25 available to the public and appropriate state agencies.

26          Sec. 506.202. COMPLAINTS. (a) The behavior analyst board  
27 by rule shall establish methods by which service recipients are



1 notified of the name, mailing address, and telephone number of the  
2 behavior analyst board for the purpose of directing complaints to  
3 the behavior analyst board. The behavior analyst board may provide  
4 for that notice:

5 (1) on each registration form, application, or written  
6 contract for services of a person regulated under this chapter;

7 (2) on a sign prominently displayed in the place of  
8 business of each person regulated under this chapter; or

9 (3) in a bill for services provided by a person  
10 regulated under this chapter.

11 (b) The behavior analyst board shall list with its regular  
12 telephone number any toll-free telephone number established under  
13 other state law that may be called to present a complaint about a  
14 health professional.

15 Sec. 506.203. INFORMATION ABOUT COMPLAINT ACTIONS. (a)  
16 The behavior analyst board shall maintain a system to promptly and  
17 efficiently act on complaints filed with the behavior analyst  
18 board. The behavior analyst board shall maintain information about  
19 parties to a complaint, the subject matter of the complaint, a  
20 summary of the results of the review or investigation of the  
21 complaint, and the disposition of the complaint.

22 (b) The behavior analyst board shall make information  
23 available describing its procedures for complaint investigation  
24 and resolution.

25 (c) The behavior analyst board shall periodically notify  
26 the complaint parties of the status of the complaint until final  
27 disposition.

1        (d) The behavior analyst board shall analyze complaints  
2 filed with the behavior analyst board to identify any trends or  
3 issues related to certain violations, including:

- 4            (1) the reason for each complaint;  
5            (2) how each complaint was resolved; and  
6            (3) the subject matter of each complaint that was not  
7 within the jurisdiction of the behavior analyst board and how the  
8 behavior analyst board responded to the complaint.

9        Sec. 506.204. GENERAL RULES REGARDING COMPLAINT  
10 INVESTIGATION AND DISPOSITION. The behavior analyst board shall  
11 adopt rules concerning the investigation of a complaint filed with  
12 the behavior analyst board. The rules must:

- 13            (1) distinguish between categories of complaints;  
14            (2) ensure that a complaint is not dismissed without  
15 appropriate consideration;  
16            (3) require that the behavior analyst board be advised  
17 of a complaint that is dismissed and that a letter or electronic  
18 communication be sent to the person who filed the complaint  
19 explaining the action taken on the dismissed complaint;

20            (4) ensure that the person who filed the complaint has  
21 an opportunity to explain the allegations made in the complaint;  
22 and

23            (5) prescribe guidelines concerning the categories of  
24 complaints that require the use of a private investigator and the  
25 procedures for the behavior analyst board to obtain the services of  
26 a private investigator.

27        Sec. 506.205. CONFIDENTIALITY OF COMPLAINT INFORMATION.

1 (a) Except as provided by Subsection (b), a complaint and  
2 investigation concerning a license holder and all information and  
3 materials compiled by the behavior analyst board in connection with  
4 the complaint and investigation are not subject to:

5 (1) disclosure under Chapter 552, Government Code; or

6 (2) disclosure, discovery, subpoena, or other means of  
7 legal compulsion for release of information to any person.

8 (b) A complaint or investigation subject to Subsection (a)  
9 and all information and materials compiled by the behavior analyst  
10 board in connection with the complaint, in accordance with Chapter  
11 611, Health and Safety Code, may be disclosed to:

12 (1) the behavior analyst board and behavior analyst  
13 board employees or agents involved in license holder discipline;

14 (2) a party to a disciplinary action against the  
15 license holder or that party's designated representative;

16 (3) a law enforcement agency if required by law;

17 (4) a governmental agency if:

18 (A) the disclosure is required or permitted by  
19 law; and

20 (B) the agency obtaining the disclosure protects  
21 the identity of any patient whose records are examined; or

22 (5) the legislature.

23 (c) Unless good cause for delay is shown to the presiding  
24 officer at the hearing, the behavior analyst board shall provide  
25 the license holder with access to all information that the behavior  
26 analyst board intends to offer into evidence at the hearing not  
27 later than the 30th day after the date the behavior analyst board

1 receives a written request from a license holder who is entitled to  
2 a hearing under this chapter or from the license holder's attorney  
3 of record.

4 (d) The behavior analyst board shall protect the identity of  
5 any patient whose records are examined in connection with a  
6 disciplinary investigation or proceeding against a license holder,  
7 except:

8 (1) a patient who initiates the disciplinary action;  
9 or

10 (2) a patient who has submitted a written consent to  
11 release the records.

12 Sec. 506.206. PUBLIC PARTICIPATION. (a) The behavior  
13 analyst board shall develop and implement policies that provide the  
14 public with a reasonable opportunity to appear before the behavior  
15 analyst board and to speak on any issue under the behavior analyst  
16 board's jurisdiction.

17 (b) The behavior analyst board shall prepare and maintain a  
18 written plan that describes how a person who does not speak English  
19 may be provided reasonable access to the behavior analyst board's  
20 programs.

21 Sec. 506.207. SUBPOENAS. (a) In an investigation of a  
22 complaint filed with the behavior analyst board, the presiding  
23 officer of the behavior analyst board may issue a subpoena to compel  
24 the attendance of a relevant witness or the production, for  
25 inspection or copying, of relevant evidence that is in this state.

26 (b) A subpoena may be served personally or by certified  
27 mail.

1        (c) If a person fails to comply with a subpoena, the  
2 behavior analyst board, acting through the attorney general, may  
3 file suit to enforce the subpoena in a district court in Travis  
4 County or in the county in which a hearing conducted by the behavior  
5 analyst board may be held.

6        (d) On finding that good cause exists for issuing the  
7 subpoena, the court shall order the person to comply with the  
8 subpoena. The court may punish a person who fails to obey the court  
9 order.

10       (e) The behavior analyst board shall pay for photocopies  
11 subpoenaed under this section a reasonable fee in an amount not to  
12 exceed the amount the behavior analyst board may charge for copies  
13 of its records.

14       (f) The reimbursement of the expenses of a witness whose  
15 attendance is compelled under this section is governed by Section  
16 [2001.103](#), Government Code.

17       (g) Information and materials subpoenaed or compiled by the  
18 behavior analyst board in connection with the investigation of a  
19 complaint may be disclosed only as provided by Section 506.205.

20                    SUBCHAPTER F. LICENSE REQUIREMENTS

21       Sec. 506.251. LICENSE REQUIRED. (a) Except as provided by  
22 Subchapter B, a person may not engage in the practice of applied  
23 behavior analysis unless the person holds a license under this  
24 chapter.

25       (b) A person may not use the title "licensed behavior  
26 analyst" or "licensed assistant behavior analyst," as appropriate,  
27 unless the person is licensed under this chapter.

1       (c) Except as provided by Subchapter B, a person may not use  
2 the title "behavior analyst" unless the person is licensed under  
3 this chapter.

4       Sec. 506.252. LICENSE APPLICATION. Each applicant for a  
5 license under this chapter must submit an application and the  
6 required fees to the behavior analyst board. The application must  
7 include sufficient evidence, as defined by behavior analyst board  
8 rules, that the applicant has successfully completed a  
9 state-approved criminal background check.

10       Sec. 506.253. REQUIREMENTS FOR LICENSED BEHAVIOR  
11 ANALYST. An applicant for a license as a licensed behavior analyst  
12 must present evidence to the behavior analyst board that the  
13 applicant:

14               (1) is currently certified by the certifying entity as  
15 a Board Certified Behavior Analyst or a Board Certified Behavior  
16 Analyst--Doctoral or an equivalent certification issued by the  
17 certifying entity;

18               (2) has met the educational requirements of the Board  
19 Certified Behavior Analyst standard or the Board Certified Behavior  
20 Analyst--Doctoral standard or an equivalent standard adopted by the  
21 certifying entity;

22               (3) has passed the Board Certified Behavior Analyst  
23 examination, or an equivalent examination offered by the certifying  
24 entity, in applied behavior analysis;

25               (4) is in compliance with all professional, ethical,  
26 and disciplinary standards established by the certifying entity;  
27 and

1           (5) is not subject to any disciplinary action by the  
2 certifying entity.

3           Sec. 506.254. REQUIREMENTS FOR LICENSED ASSISTANT BEHAVIOR  
4 ANALYST. An applicant for a license as a licensed assistant  
5 behavior analyst must present evidence to the behavior analyst  
6 board that the applicant:

7           (1) is currently certified by the certifying entity as  
8 a Board Certified Assistant Behavior Analyst or an equivalent  
9 certification issued by the certifying entity;

10           (2) has met the educational requirements of the Board  
11 Certified Assistant Behavior Analyst standard or an equivalent  
12 standard adopted by the certifying entity;

13           (3) has passed the Board Certified Assistant Behavior  
14 Analyst examination, or an equivalent examination offered by the  
15 certifying entity, in applied behavior analysis;

16           (4) is in compliance with all professional, ethical,  
17 and disciplinary standards established by the certifying entity;

18           (5) is not subject to any disciplinary action by the  
19 certifying entity; and

20           (6) is currently supervised by a licensed behavior  
21 analyst in accordance with the requirements of the certifying  
22 entity.

23           Sec. 506.255. ISSUANCE OF LICENSE. The behavior analyst  
24 board shall issue a license as a licensed behavior analyst or a  
25 licensed assistant behavior analyst, as appropriate, to an  
26 applicant who:

27           (1) complies with the requirements of this chapter;

1           (2) meets any additional requirements the behavior  
2 analyst board establishes by rule; and

3           (3) pays the required fees.

4           Sec. 506.256. TEMPORARY LICENSE. (a) The behavior analyst  
5 board by rule may provide for the issuance of a temporary license.

6           (b) Rules adopted under this section must include a time  
7 limit for a temporary license.

8           Sec. 506.257. RECIPROCITY. (a) The behavior analyst board  
9 shall issue a license to a person who is currently licensed as a  
10 behavior analyst or as an assistant behavior analyst from another  
11 state or jurisdiction that imposes licensure requirements similar  
12 to those specified in this chapter.

13           (b) An applicant for a reciprocal license shall:

14                 (1) submit evidence to the behavior analyst board that  
15 the applicant:

16                         (A) is in good standing as determined by the  
17 behavior analyst board;

18                         (B) holds a valid license from another state or  
19 jurisdiction; and

20                         (C) is in compliance with other requirements  
21 established by Sections 506.252, 506.253, 506.254, or 506.255, as  
22 appropriate; and

23           (2) pay the required fees.

24           Sec. 506.258. INACTIVE STATUS. The behavior analyst board  
25 by rule may provide for a person licensed under this chapter to be  
26 placed on inactive status.

27           Sec. 506.259. RETIREMENT STATUS. The behavior analyst



1 board by rule may adopt a system for placing a person licensed under  
2 this chapter on retirement status.

3 SUBCHAPTER G. LICENSE RENEWAL

4 Sec. 506.301. LICENSE EXPIRATION. (a) A license issued  
5 under this chapter expires on the second anniversary of the date of  
6 issuance.

7 (b) The behavior analyst board by rule may adopt a system  
8 under which licenses expire on various dates during the year. For a  
9 year in which the expiration date is changed, the behavior analyst  
10 board shall prorate the licensing fee so that each license holder  
11 pays only the portion of the fee that is allocable to the number of  
12 months during which the license is valid. On renewal of the license  
13 on the new expiration date, the entire licensing fee is payable.

14 Sec. 506.302. LICENSE RENEWAL. Before the expiration of a  
15 license, a license may be renewed by:

- 16 (1) submitting an application for renewal;  
17 (2) paying the renewal fee imposed by the behavior  
18 analyst board; and  
19 (3) providing verification to the behavior analyst  
20 board of continued certification by the certifying entity, which  
21 signifies that the applicant for renewal has met any continuing  
22 education requirements established by the certifying entity.

23 SUBCHAPTER H. LICENSE DENIAL AND DISCIPLINARY PROCEDURES

24 Sec. 506.351. GROUNDS FOR LICENSE DENIAL AND DISCIPLINARY  
25 ACTION. After a hearing, the behavior analyst board may deny a  
26 license to an applicant, suspend or revoke a person's license, or  
27 place on probation a license holder if the applicant or license

1 holder:

2 (1) violates this chapter or a behavior analyst board  
3 order or rule;

4 (2) obtains a license by means of fraud,  
5 misrepresentation, or concealment of a material fact;

6 (3) sells, barter, or offers to sell or barter a  
7 license; or

8 (4) engages in unprofessional conduct that:

9 (A) endangers or is likely to endanger the  
10 health, welfare, or safety of the public as defined by behavior  
11 analyst board rule; or

12 (B) violates the code of ethics adopted and  
13 published by the behavior analyst board.

14 Sec. 506.352. PROBATION. If a license suspension is  
15 probated, the behavior analyst board may require the license holder  
16 to:

17 (1) report regularly to the behavior analyst board on  
18 matters that are the basis of the probation;

19 (2) limit the license holder's practice to the areas  
20 prescribed by the behavior analyst board; or

21 (3) continue or review continuing professional  
22 education until the license holder attains a degree of skill  
23 satisfactory to the behavior analyst board in those areas that are  
24 the basis of the probation.

25 Sec. 506.353. INFORMAL PROCEEDINGS. (a) The behavior  
26 analyst board by rule shall adopt procedures governing:

27 (1) informal disposition of a contested case under

1 Section 2001.056, Government Code; and

2 (2) an informal proceeding held in compliance with  
3 Section 2001.054, Government Code.

4 (b) Rules adopted under this section must:

5 (1) provide the complainant and the license holder  
6 with an opportunity to be heard; and

7 (2) require the presence of a member of the behavior  
8 analyst board's or medical board's legal staff to advise the  
9 behavior analyst board or medical board or the behavior analyst  
10 board's or medical board's employees.

11 Sec. 506.354. HEARING. A license holder is entitled to a  
12 hearing before the State Office of Administrative Hearings before a  
13 sanction is imposed under this subchapter.

14 Sec. 506.355. SCHEDULE OF SANCTIONS. (a) The behavior  
15 analyst board by rule shall adopt a broad schedule of sanctions for  
16 violations under this chapter.

17 (b) The State Office of Administrative Hearings shall use  
18 the schedule for any sanction imposed under this chapter as the  
19 result of a hearing conducted by that office.

20 Sec. 506.356. EMERGENCY SUSPENSION. (a) The behavior  
21 analyst board, or a three-member committee of behavior analyst  
22 board members designated by the behavior analyst board, shall  
23 temporarily suspend the license of a license holder if the behavior  
24 analyst board or committee determines from the evidence or  
25 information presented to the behavior analyst board or committee  
26 that continued practice by the license holder would constitute a  
27 continuing and imminent threat to the public welfare.

1        (b) A license may be suspended under this section without  
2 notice or hearing on the complaint if:

3            (1) action is taken to initiate proceedings for a  
4 hearing before the State Office of Administrative Hearings  
5 simultaneously with the temporary suspension; and

6            (2) a hearing is held as soon as practicable under this  
7 chapter and Chapter 2001, Government Code.

8        (c) The State Office of Administrative Hearings shall hold a  
9 preliminary hearing not later than the 14th day after the date of  
10 the temporary suspension to determine if there is probable cause to  
11 believe that a continuing and imminent threat to the public welfare  
12 still exists. A final hearing on the matter shall be held not later  
13 than the 61st day after the date of the temporary suspension.

14        SUBCHAPTER I. PENALTIES AND ENFORCEMENT PROCEDURES

15        Sec. 506.401. INJUNCTIVE RELIEF. The behavior analyst  
16 board or the attorney general may institute a proceeding to enforce  
17 this chapter, including a suit to enjoin a person from practicing  
18 applied behavior analysis without complying with this chapter.

19        Sec. 506.402. MONITORING OF LICENSE HOLDER. The behavior  
20 analyst board by rule shall develop a system for monitoring a  
21 license holder's compliance with this chapter. The rules must  
22 include procedures for:

23            (1) monitoring for compliance a license holder who is  
24 ordered by the behavior analyst board to perform a certain act; and

25            (2) identifying and monitoring each license holder who  
26 represents a risk to the public.

27        Sec. 506.403. ADMINISTRATIVE PENALTY. (a) The behavior

1 analyst board may impose an administrative penalty against a person  
2 licensed under this chapter who violates this chapter or a rule or  
3 order adopted under this chapter.

4 (b) An administrative penalty may not exceed \$200. Each day  
5 a violation continues or occurs is a separate violation for the  
6 purpose of imposing a penalty. The amount of the penalty shall be  
7 based on:

8 (1) the seriousness of the violation, including the  
9 nature, circumstances, extent, and gravity of any prohibited acts,  
10 and the hazard or potential hazard created to the health, safety, or  
11 economic welfare of the public;

12 (2) the history of previous violations;

13 (3) the amount necessary to deter a future violation;

14 (4) efforts to correct the violation; and

15 (5) any other matter that justice requires.

16 (c) The person may stay enforcement during the time the  
17 order is under judicial review if the person pays the penalty to the  
18 court clerk or files a supersedeas bond with the court in the amount  
19 of the penalty. A person who cannot afford to pay the penalty or  
20 file the bond may stay enforcement by filing an affidavit like that  
21 required by the Texas Rules of Civil Procedure for a party who  
22 cannot afford to file security for costs, except that the behavior  
23 analyst board may contest the affidavit as provided by those rules.

24 (d) A proceeding to impose an administrative penalty is  
25 subject to Chapter 2001, Government Code.

26 Sec. 506.404. CIVIL PENALTY. (a) A person found by a court  
27 to have violated this chapter is liable to this state for a civil

1 penalty of \$200 for each day the violation continues.

2 (b) A civil penalty may be recovered in a suit brought by the  
3 attorney general, a district attorney, or a county attorney.

4 Sec. 506.405. CRIMINAL OFFENSE. (a) A person commits an  
5 offense if the person knowingly violates this chapter.

6 (b) An offense under this section is a Class A misdemeanor.

7 (c) Each day of violation constitutes a separate offense.

8 SECTION 2. As soon as practicable after the effective date  
9 of this Act, the governor shall appoint nine members to the Texas  
10 Board of Behavior Analyst Examiners in accordance with Chapter 506,  
11 Occupations Code, as added by this Act. In making the initial  
12 appointments, the governor shall designate three members for terms  
13 expiring February 1, 2019, three members for terms expiring  
14 February 1, 2021, and three members for terms expiring February 1,  
15 2023.

16 SECTION 3. Not later than January 1, 2018, the Texas Board  
17 of Behavior Analyst Examiners shall adopt the rules, procedures,  
18 and fees necessary to administer Chapter 506, Occupations Code, as  
19 added by this Act.

20 SECTION 4. Notwithstanding Chapter 506, Occupations Code,  
21 as added by this Act, a behavior analyst or assistant behavior  
22 analyst is not required to hold a license under that chapter to  
23 practice as a licensed behavior analyst or licensed assistant  
24 behavior analyst in this state before June 1, 2018.

25 SECTION 5. (a) Except as provided by Subsection (b) of this  
26 section, this Act takes effect September 1, 2017.

27 (b) Section 506.251, Occupations Code, and Subchapter I,

H.B. No. 26

1 Chapter 506, Occupations Code, as added by this Act, take effect  
2 June 1, 2018.